

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 745 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ @ SHAMBHU SAMARATBHAI BALIM,

Versus

DISTRICT MAGISTRATE

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. District Magistrate, Mehsana, passed an order dated September 20, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detainee under the provisions of the PASA Act.

#. The detaining authority took into consideration three offences registered against the detainee under the Indian Penal Code. Statements of three witnesses were considered, whose identity is not disclosed in exercise of powers under section 9 (2) of the PASA Act. The authority after considering the less drastic remedy, came to a conclusion that the detention under the PASA Act is the only remedy that could be resorted to for immediately preventing the petitioner from pursuing his bootlegging activities.

#. Many contentions are raised in the petition. However, Ms. Bhatt submitted that the detainee had made a representation dated 7th February, 2000, demanding certain documents namely panchnama of recovery of weapons and place of offence in respect of CR No. 299/99 but the detaining authority rejected the representation of the detainee and did not supply the relevant documents. This delay in supply of necessary documents has resulted into denial of right of making an effective representation enshrined under Article 22 (5) of the Constitution of India and therefore, the petition may be allowed and the order be quashed. Learned advocate for the petitioner places on record a letter dated 14th February, 2000 received from the State of Gujarat.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He stated that the government issued instructions to the detaining authority to supply these documents. Against this, it is stated at the bar by Ms. Bhatt that the documents are till date not supplied. The detaining authority has not filed any affidavit-in-reply. Mr. Dave states that there is no communication from the detaining authority about the compliance of the instructions of the government for supply of the documents. In these facts of the case, it appears that the detainee has not been supplied the relevant documents though demanded and therefore, the continued detention is rendered illegal.

#. Be that as it may, the fact remains that the detaining authority failed in its duty of supplying to the detainee all relevant documents relied upon by it while passing the order of detention. This can certainly be said to have infringed the right of the detainee of making an effective representation due to failure on the part of the detaining authority of supplying the documents. This would have an adverse effect on the order of detention and the impugned order cannot be supported. The petition therefore, deserves to be

allowed.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 20th September, 1999 is hereby quashed and set aside. The detenue - Firoz @ Shambhu Samaratbhai Balim, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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